"was entitled to no consideration against the surety, unless by the terms of the contract the surety was to be bound thereby." Yet the present court somewhat arbitrarily declared that case inapplicable to the facts in this, and rested its decision on *Bank of New London* v. *Ketchum et al.*, 66 Wis 428, 29 N. W. Rep. 216. The latter case is exactly in point, but was decided, as was this, with more regard to the inconvenience of re-litigation than to the law and equity that every man is entitled to his day in court.

TAXATION—OFFICERS' FEES—UNIFORMITY.—Relator, a duly authorized administrator of a partnership estate, presented an inventory and appraisement of said estate to defendant, the county clerk, for filing. Defendant demanded two hundred and twenty-five dollars, as probate fees, under a statute requiring the payment of fees to the clerk in probate proceedings proportional in amount to the property owned by the estate, and refused to file any papers for the administration of the estate until such sum be paid. The state constitution provides for a uniform and equal rate of assessment and taxation of property. This action was brought by relator to secure a writ of mandamus directing the clerk to receive and file the papers in the probate proceedings. *Held,* that the writ should be granted, on the ground that the fees amounted to a property tax, and that the statute authorizing them violated the constitutional provisions with respect to the uniformity of property taxation. *State ex rel. Nettleton* v. *Case* (1905), — Wash. —, 81 Pac. Rep. 554.

If a charge, though in the statute authorizing it designated as a "fee", is in fact based entirely upon a property valuation and not upon actual and necessary services rendered or to be rendered, it is a property tax, rather than a fee for services. *State ex rel. Davidson* v. *Gorman,* 40 Minn. 232, 41 N. W. 948; *State ex rel. Sanderson* v. *Mann,* 76 Wis. 469, 45 N. W. 526; *Fatjo* v. *Pfister,* 117 Cal. 83, 48 Pac. 1012. A law providing for the collection of a "fee", which has for its direct and only purpose the creation of a fund by an exaction on property to be paid into the state treasury to be used indiscriminately for any and all public purposes, creates a tax. *Pittsburg, C. & St. L. Ry. Co.* v. *State,* 49 Ohio State 189, 30 N. W. 435, directly in point; and by way of inference *In re Wau Yin,* 22 Fed. Rep. 701, where a charge as a "license fee" was held to be a tax because the charge was much greater than the service rendered would warrant.

TELEGRAM—INTERSTATE COMMERCE—PENALTY BY STATE STATUTE FOR NON-DELIVERY.—A telegram was received at one point in Virginia to be delivered at another in the same state, but in transmission was lost in West Virginia. In this action for the penalty inflicted by state statute for non-delivery, *Held,* that the transmission was not interstate commerce and that the company was liable. *Western Union Telegraph Co.* v. *Hughes* (1905), — Va. —, 51 S. E. Rep. 225.

Two judges dissented. They were of opinion that a Virginia statute could not penalize the defendant for a default that occurred in West Virginia. But the company owed the plaintiff the duty of delivering the telegram at the prescribed destination, which was in Virginia, and so default occurred

there. This was the company's common-law duty. *Western Union Telegraph Co.* v. *Boots,* 10 Tex. Civ. App. 540. The statute only added a penalty to damages for the breach of that duty. *Western Union Telegraph Co.* v. *James,* 162 U. S. 650, 16 Sup. Ct. 214, 47 L. Ed. 333. Again the dissenting opinion asserted that transmission of a message between two points in the same state is interstate commerce if the message is sent over wires strung in part through another state. The majority of the court could have conceded this and nevertheless held the company liable. For the statute is an exercise of the state's police power merely, and is lawful because it in no way regulates the company's duties or conduct outside the state. *Western Union Telegraph Co.* v. *James,* supra. In fact, it aids interstate commerce. *Id.* So, while in *Western Union Telegraph Co.* v. *Pendleton,* 122 U. S. 347, 7 Sup. Ct. Rep. 1126, the company was held not liable to such a penalty for failure to deliver a telegram outside the state which imposed the penalty, in *Western Union Telegraph Co.* v. *James,* supra, the liability did exist for failure to deliver in the state a telegram sent from without it, and in *Postal Telegraph Cable Co.* v. *Umstadter,* 103 Va. 742, 50 S. E. 259, the liability was held to arise on failure to deliver a telegram addressed to a point outside the state, when the failure was a neglect to dispatch the telegram from the point of receipt. On the question whether telegrams sent between two points of the same state, but passing for a distance through another state, are interstate commerce, the majority reaffirmed *Western Union Telegraph Co.* v. *Reynolds,* 100 Va. 459, 41 S. E. 856, 93 Am. St. Rep. 971, holding that such telegrams do not constitute interstate business. The dissenting judges regarded that case as overruled by *Hanley* v. *Kansas City So. R. Co.,* 187 U. S. 617, 23 Sup. Ct. Rep. 214, 47 L. Ed. 333, which declared that transportation by railway between two points in the same state but in part through another state was interstate commerce. And it would seem that the same difficulty that led the courts to hold thus in regard to railroads—conflicting rate-regulations made by the states concerned—would impel the courts to consider the transmission of news by wire through two or more states, although between points in the same state, as interstate commerce. *State* v. *Western Union Telegraph Co.,* 113 N. C. 213, holding such transmission to be domestic commerce, was distinctly disapproved as in *Hanley* v. *Kansas City So. R. Co.,* supra.

VENDOR AND PURCHASER—COVENANT—RIGHTS OF COVENANTEE WHO BUYS APPARENT PARAMOUNT TITLE.—Defendant purchased land by deed containing full covenants of title, and retained a portion of the purchase price to secure himself against an outstanding lien on which suit was pending between his vendor and a third party. In this action for the balance of the purchase price it was *held,* that the defendant was justified in buying the land at sheriff's sale on execution of the judgment enforcing the lien, and could counterclaim the amount so paid though the judgment had been reversed and the lien held to be unenforceable. *Talbott* v. *Donaldson* (1905), — Kan. —, 80 Pac. Rep. 981.

While a covenantee who purchased an outstanding title has the burden of proving that the title so purchased is paramount to that acquired from